

LOCAL RULES

FOUNTAIN CIRCUIT COURT

IN THE MATTER OF THE RULES OF PRACTICE OF THE FOUNTAIN CIRCUIT COURT, 61ST JUDICIAL CIRCUIT OF INDIANA

Per T. R. 81 of the Indiana Rules of Civil Procedure, it is further **ORDERED** that the following local rules relating to practice and procedure of the Fountain Circuit Court be adopted, effective the 1st day of January 2003, and as amended thereafter.

Susan Orr Henderson, Judge, Fountain Circuit Court

OFFICERS OF THE COURT

Susan Orr Henderson, Judge

Mariann Martin, Clerk

Mary Elaine Denhart, Court Reporter

Dianne Cotten, Court Bailiff

Robin Hegg, Chief Probation Officer

Randy Hankins, Probation Officer

Tracey Woodard, Administrative Assistant to Probation Officer

Donald E. Gibson, Commissioner, Small Claims-Traffic Division

Susie Keller, Court Reporter, Small Claims-Traffic Division

LOCAL RULES OF CIVIL PROCEDURE

RULE 1: APPEARANCES AND WITHDRAWAL OF APPEARANCES:

LR 23-TR 03.1-FLR 1 (a)- (h)

(a) All pleadings shall show the name and address, telephone number, FAX number, and attorney number of the individual attorney or attorney filing the same. All attorneys for a defendant or a third party shall file a formal written appearance. Any pleading not signed by at least one attorney appearing of record as required by T.R .11 shall not be accepted for filing by the Clerk, or if inadvertently accepted for filing, shall, upon discovery of such omission, be stricken from the record.

(b) A rubber stamp or facsimile signature on the original of any pleading shall not be acceptable except with leave of Court.

(c) Notices of court entries or court action shall be sent by the Court to counsel at the address appearing in the formal appearance, and shall constitute notice to the parties. Non-local attorneys shall see that the cause is properly looked after, or shall employ local counsel for such purpose, and shall not depend upon the Clerk to look after such cause or perform duties of acting counsel therein.

(d) Counsel seeking to withdraw their appearance in any action shall file a motion requesting leave to do so. Such motion shall fix a date for such withdrawal, and thereafter satisfactory evidence of a least 10 days written notice to the client in advance of such date of withdrawal shall be filed with the Court.

(e) A withdrawal of appearance accompanied by the simultaneous appearance of new counsel shall constitute a waiver of paragraph (d) above.

(f) If withdrawing counsel is not able to locate his client, he must show satisfactory proof to the Court of a bona fide effort to so locate the client.

(g) In criminal cases, a withdrawal of appearance may not be granted without a hearing conducted in open court in presence of the defendant, unless the reason of such withdrawal is the inability to locate and communicate with the defendant, and in such event, a warrant shall forthwith be issued for the defendant.

(h) This rule shall apply to all proceedings in the Court, including probate and guardianship proceedings.

RULE 2: FEES AND MISCELLANEOUS CHARGES:

LR 23-TR 03-FLR 2(a)-(c)

(a) In the event service of process or pleadings is done by publication, or by certified or registered mail, causing additional court costs, the same shall be prepaid to the Clerk.

(b) Counsel filing pleadings by mail, or otherwise, and who request the return of file-marked copies, shall furnish the Clerk with self-addressed envelopes with sufficient postage attached for such return.

(c) All miscellaneous charges or expenses not properly chargeable as costs, including charges for copying, for FAX, postage, etc. shall be paid in advance by the party incurring such charges.

RULE 3: SERVICE OF PROCESS

LR 23-TR 04-FLR 3(a)-(c)

(a) A praecipe shall be prepared in all cases as provided by T.R. 4.

(b) If service is to be had by certified mail, the party requesting such service shall provide the Clerk with a duly addressed envelope and prepare a return receipt with the cause number and name of cause shown thereon.

(c) If summons, citations, etc. are to be served by personal service, the party seeking such service shall provide the Sheriff with the name of the person to be served, the address of such person, including specific driving instructions, place of employment and work shift if service is to be had at place of employment, and name and telephone number of the attorney seeking service.

RULE 4: FORM AND STYLE OF PAPERS, NUMBER OF COPIES, FILING AND SERVICE:

LR23-AR00-FLR 4(a)-(i)

(a) Persons seeking service of any paper or pleading shall furnish the Clerk with sufficient copies as may be necessary for such service.

(b) The files of the Clerk shall be kept under the system commonly known as “flat filing”, and all papers presented to the Court for filing shall be 8” X 11”, flat and unfolded. Original oversized documents may be filed as part of a pleading, but shall be reduced to 8” X 11” where possible. Original documents shall be submitted on rag bond paper. Typewritten pages shall have no covers or backs and shall be fastened together at the top, but at no other place. All pleadings shall be typewritten on unlined paper, one and one-half spaced with double spacing between paragraphs.

(c) All orders and entries shall be prepared by counsel except as may be ordered by the Court. In those matters involving routine or simple orders or entries, the same shall be prepared in advance and submitted to the Court. In the event the order or entry is complicated and cannot be prepared in advance, it shall be prepared immediately after the rendering of the order.

(d) The attorney responsible for securing the order or entry shall furnish the Court with a service list, and furnish sufficient copies for service on each affected party, together with envelopes addressed with sufficient postage for such service.

(e) All orders or entries submitted to the Court shall be in sufficient number that the original may be retained by the Clerk, and a copy mailed to each affected party.

(f) All papers may be filed by FAX transmission, and the Court may issue orders by FAX transmission. Such FAX transmissions shall be considered as mailed for purposes of computing time under the Indiana trial rules.

(g) In any cause in which a Special Judge is presiding, counsel shall furnish such Judge with copies of all matters filed in the cause at the time of filing, and shall include such in the certificate of service filed with such paper. Counsel shall also forward to such Special Judge copies of all papers filed in the cause prior to the qualification of the Special Judge upon the qualification of such Judge.

(h) No person shall withdraw an original paper or the Court file from the custody of the Clerk except by order of Court and upon leaving a proper receipt therefore.

(i) The Clerk may make such other rules necessary for the retention of all papers properly in the Clerk's custody.

**RULE 5: MOTION PRACTICE, HEARINGS, ATTORNEY CONFERENCES,
DISCOVERY FILINGS, RESOLUTIONS OF PENDING MOTIONS, ETC.:**

LR 23-TR 07-FLR 5(a)-(h)

(a) Motions to Dismiss per T.R. 12, for judgment on the pleadings, for more definite statement, to strike, or motions per T.R. 37 shall be accompanied by a separate supporting brief. Unless the Court otherwise directs, an adverse party shall have 15 days after service of the initial brief in which to serve and file an answer brief, and the moving party shall have 7 days after service of the answer brief in which to serve and file a reply thereto. Each motion shall be filed separately; alternative motions filed together shall each be named in the caption on the face. Failure to file an answer or reply brief within the time prescribed shall subject the motion to summary ruling. A party may request an oral argument upon the motion, but the granting of the same is discretionary with the Court, except with respect to motions for summary judgment.

(b) Per T.R. 5, no matters involving discovery shall be filed with the Clerk, although notices of discovery are permissible, and in the event such matters, other than notices, are forwarded to the Clerk for filing, the Clerk shall refuse the same and may return them to counsel, or dispose of the same, but in no event are such matters to be file-marked and placed in the case file, without the authority of the Court.

(c) No extensions of time to file responsive pleadings shall be granted except upon written motion and order of Court.

(d) Parties shall immediately notify the Court of any reasonably anticipated settlement of a case or the resolution of any pending motion or matter.

(e) To curtail delay in the administration of justice, the Court shall refuse to rule on any and all motions involving discovery matters per TR 26-37 unless moving counsel shall first advise the Court in writing that after personal consultation and a bona fide attempt to resolve differences, counsel are unable to reach an accord.

(f) No mimeographed or otherwise duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the case in which they are served.

(g) In the event of a motion to compel as to interrogatories or production or objections to such discovery are filed, such motion or objections shall set forth in full the interrogatory or request served, and the legal basis upon which the motion or objection is made. Failure to so state the legal basis for not responding to discovery will constitute a waiver of such objections.

(h) The number of interrogatories which may be served per T.R. 33 shall be limited so as to require the answering party to make no more than 125 responses, unless, due to complexity of the issues in the case, the Court waives this requirement.

RULE 6: CONTINUANCES IN CIVIL CASES:

LR 23-TR 53.5-FLR 6(a)-(b)

(a) One continuance may be granted in any case of any trial or hearing setting by agreement of the parties or their counsel upon oral or written motion.

(b) In the absence of an agreement, no continuance will be granted except upon written verified motion.

RULE 7: PRE-TRIAL OR STATUS CONFERENCES; PRE-TRIAL PROCEDURES:

LR 23-TR16-FLR 7(a)-(j)

(a) The fundamental purpose of pre-trial procedure as provided in TR 16 is to simplify issues and facilitate the trial of issues to be tried, and is contemplated that all parties will comply with T.R. 16.

(b) It is anticipated that pre-trial procedure will consist of a status conference after issues are closed and a reasonable time for preliminary discovery procedures. Such status conferences may be had by conference telephone call, and all counsel shall be prepared at the same to set cut-off dates for discovery, the exchange of preliminary witness and exhibit lists, setting hearing dates for pending motions or motions to be filed, discussing alternative methods to resolve disputes, and setting trial date. A final pre-trial conference shall be scheduled for the cause at the status conference.

(c) A final pre-trial conference shall be attended by all counsel expecting to participate at the trial of the case, and unless appearing, counsel shall not be permitted to participate in the trial, except by order of Court.

(d) Unless otherwise ordered, final pre-trial conferences will be used in part as settlement conferences, and counsel shall have clients available in person or by telephone for such purpose.

(e) Extensions of cut-off dates set in pre-trial procedure shall not be altered except by order of Court.

(f) All trial briefs or preliminary trial motions shall be filed at least 5 days prior to trial;

(g) All exhibits shall be pre-marked by counsel prior to trial, and an index of such pre-marked exhibits prepared and exchanged, with a copy to the Court, and counsel shall stipulate as to the admissibility of any such exhibits prior to trial and advise the Court as to such stipulated exhibits prior to trial.

(h) Unless otherwise ordered by the Court, in all jury cases, all exhibits to be offered into evidence and to be read by the Jury shall be duplicated by the party offering the same so that each juror shall have a copy to read at the time the same is offered and admitted into evidence. Such copies shall be made prior to trial and counsel shall have the same available for opposing counsel to inspect prior to trial.

(i) All proposed preliminary instructions to be tendered by the parties shall be submitted to the Court at least 5 days prior to trial.

(j) Copies of the names and addresses of all jury panels called for trial, together with information forms for said panel, and copies of the Court's proposed preliminary instructions shall be available in the Office of the Court Bailiff at least 5 days prior to trial. Counsel wishing the same to be mailed to them should furnish to the Bailiff an envelope, with sufficient postage, for such purpose.

RULE 8: JURY SELECTION:

LR 23-TR 47-FLR 8(a)-(k)

(a) The purpose of voir dire examination of prospective jurors is to select a fair and impartial jury, to discover any basis for challenge for cause, and to gain knowledge for

the exercise of peremptory challenges. No voir dire examination shall include, unless otherwise ordered by the Court: (1) Questions previously asked by the Court or counsel and answered; (2) Questions based upon anticipated instructions as to the law of the case; (3) Questions based upon hypothetical facts, which are in substance, counsel's version of the facts of the case being tried; (4) Questions relating to insurance carriers or insurance coverage of any type, including asking a prospective juror if he or she is an officer or director of some insurance company.

(b) Jury information forms of prospective jurors shall be on file with the Court Bailiff, and copies of same shall be given to all parties prior to trial, but it shall be the responsibility of counsel to obtain them from the Bailiff and to review the same prior to commencing jury selection, and no questions shall be asked of prospective jurors which are adequately answered in such jury information forms.

(c) The Court shall swear the entire panel of prospective jurors, and all of the panel shall remain in the courtroom during the entire voir dire examination, unless otherwise ordered by the Court. The voir dire examination shall commence with the Court conducting the same, asking questions of the entire panel with a view of establishing a basis for challenge for cause.

(d) Any challenge for cause must be made when such cause becomes known, or the same will be deemed waived.

(e) Upon the Court completing its examination of the panel as a whole, a panel of 6 or 12, as the case may be, shall then be seated in the jury box, and counsel may be permitted to supplement the Court's examination on subjects not covered by the Court or in the Jury information forms. Provided, however, the Court, in its discretion, may conduct the entire voir dire examination. The length of any supplemental examination by counsel shall be reasonable, unless a specific time limit is fixed by the Court. All questions of counsel shall be directed so far as reasonably possible to the panel as a whole rather than to individual jurors.

(f) The party having the burden of proof shall proceed first with such supplemental examination, and the opposing side shall follow, and except for good cause shown, each side shall have only one such examination of such seated panel.

(g) After each side has completed its supplemental examination, peremptory challenges shall be made in writing on a form supplied by the Court, and then handed to the Bailiff, and then given to the Court, and the Court will then excuse the challenged juror. Such challenges shall be made without comment by counsel, and without consultation between opposing sides. If no such challenge is made, counsel shall give to the Court a written acceptance of the Jury as seated on a form provided by the Court. Jurors not challenged as set forth herein shall be deemed accepted.

(h) If peremptory challenges are made, and challenged jurors excused, replacement jurors shall then be seated in the jury box, and each side shall have an opportunity to a supplemental examination of the replacement jurors only, as in paragraph (d) above, with peremptory challenges to be then made as in paragraph (f). Such supplemental examination and challenging shall be limited to the replacement jurors. Additional replacing of jurors, examination thereof and challenges shall be made in like fashion until a Jury is selected. Alternate jurors, if any, shall then be likewise examined and selected.

(i) No juror left unchallenged peremptorily may be thereafter reexamined or challenged, except for good cause shown; and the passing of any juror or the failure to peremptorily challenge that juror, shall be deemed a waiver of the right to so challenge the same, except for good cause shown.

(j) A peremptory challenge of the same juror by both sides shall count against the number of challenges for each side.

(k) Only one attorney for each party shall conduct the entire voir dire examination for that party.

RULE 9: TRIALS:

LR 23-TR38-FLR 9(a)-(g)

(a) Indiana Pattern Jury Instructions shall be used where applicable.

(b) All requests for special instructions submitted in accordance with TR 51 shall be submitted to the Court not later than the beginning of trial. Counsel shall have the right to submit additional instructions during trial on matters which could not reasonably have been anticipated in advance of trial. Such requests for special instructions shall contain

citations to supporting authorities. Instructions need not be exchanged by counsel until after the evidence has been submitted, and a formal tender of proposed special instructions made.

(c) When more than one case is set for trial on a given trial date, the case set as a second or third setting shall be required to stand for trial if counsel is given 14 calendar days notice that the case first set has been settled.

(d) All proposed findings of fact and conclusions of law in cases where ordered shall be prepared and submitted by counsel at a time to be set by the Court.

(e) Opening statements of counsel shall contain a brief summary of the substance of the evidence intended to be offered with necessary explanations in clear and concise form, and the opening statements shall not be used to impose or convey proof by means of unsworn facts or to argue items of evidence or discuss the law except insofar as it is necessary to give the Jury an understanding of the theory of the case.

(f) Opening statements and final arguments shall not be recorded unless the parties make a special request therefore and the Court makes an order requiring such recordation.

(g) In the examination of any witness, one attorney for each party, and only one, shall conduct the entire examination of each individual witness, and said attorney shall make all objections, offers to prove, or other motions incidental to such examination.

RULE 10: DEPOSITIONS, CUSTODY AND DISPOSITION OF EXHIBITS:

LR 23-TR 26-FLR 10(a)-(e)

(a) Depositions filed with the Clerk or Court are published upon filing, and at any time thereafter, the deposition may be opened upon order of the Court.

(b) Depositions of experts, listed on a party's witness list, may be taken for the purpose of using the same as evidence at trial after the date for cutting off discovery, if the same can be completed and filed within a reasonable time before commencement of trial.

(c) After being marked for identification all documentary evidence offered or admitted into evidence shall be placed in the custody of the Court Reporter, unless otherwise ordered by the Court.

(d) All exhibits placed in custody of Court Reporter shall be taken away by party offering them in evidence, except as otherwise ordered by the Court, within 90 days after the case is decided, unless an appeal is taken. In all cases in which an appeal is taken exhibits shall be taken away within 90 days after the appeal is concluded. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed.

(e) If the parties or counsel fail to remove exhibits within the time prescribed, the exhibits may be disposed of by the Court.

RULE 11: LIBRARY:

LR 23-AR00-FLR 11

No book shall be removed from the Court library without a receipt being left therefor with the Bailiff; and the Court computer shall not be used for research purposes without notifying the Court or the Bailiff of such use.

RULE 12: DISSOLUTIONS OF MARRIAGE, PATERNITY ACTIONS, URESA ACTIONS:

LR 23-FL00-FLR 12(a)-(i)

(a) Except with consent of the Court, no hearing, final or provisional, shall be had without all parties present in Court.

(b) The Court may appoint guardians ad litem or CASA's for the minor children involved in a dissolution proceeding, and the costs thereof shall be borne equally by the parties unless otherwise ordered by the Court;

(c) In all dissolutions involving minor children, the parties shall comply with the Standing Order to Attend Dissolution Workshop, and shall cause proof of such compliance to be filed with the Court prior to any final hearing. This Rule shall apply to Summary Dissolution of Marriage Decrees.

(d) In all dissolutions involving minor children, each party shall submit to the Court the appropriate Worksheet provided in the Indiana Support Guidelines. This Rule shall apply to Summary Dissolution of Marriage Decrees.

(e) In all dissolutions involving minor children, the parties shall comply with the Indiana Support Guidelines with respect to support of the children, and shall further comply with the Parenting Time Guidelines adopted by the Indiana Supreme Court.

(f) In the event marital counseling is ordered by the Court, in addition to the Dissolution workshop, such counseling shall be at the expense of the parties, and the parties shall cause copies of reports of such counseling to be filed with the Court.

(g) Where applicable, all of the Rules above shall apply to Paternity actions and URESA actions, Petitions for Support, etc.

(h) At the time of all Dissolution Decrees, where applicable, counsel shall submit proposed Child Support Income Withholding Orders .

(i) The Petition for Dissolution shall include the social security numbers of the parties, and children (if available).

RULE 13: DUTIES OF ATTORNEYS, COURT ROOM ETIQUETTE:

LR 23-AR00-FLR13 (a)-(h)

(a) It is the responsibility of counsel to prepare judgments and orders as may be required by the Court.

(b) Attorneys have the responsibility to keep themselves informed of the status of the cases in which they appear. The Court may, in its discretion, furnish copies of CCS printouts or notices from time to time, but it is counsel's responsibility to keep themselves informed as to all rulings, notices of settings, and current status of matters in which they appear.

(c) Attorneys shall be punctual.

(d) Attorneys shall be dressed in appropriate business attire when appearing in Court.

(e) Attorneys shall advise their clients and witness concerning formalities in Court and etiquette in Court, and shall further advise them of the proper attire for appearances in Court. Casual and leisure attire are not proper apparel and do not conform to courtroom decorum.

(f) No person shall smoke, chew gum or tobacco, eat confections, read newspapers or other publications, knit, attend crying children, converse or indulge in any other similar conduct which might be offensive or distracting to any person or the Court when appearing in the Court.

(g) No person shall curse or use offensive language in the courtroom or in the offices of the Court, Court Reporter, or Court Bailiff.

(h) All attorneys releasing or satisfying a judgment shall notify the Court or Clerk in writing of such release or satisfaction.

RULE 14: DEFAULT JUDGMENTS:

LR 23-TR54-FLR 14(a)-(d)

(a) Default judgments shall be taken as provided by T.R. 55, provided that no hearing on any motion for default judgment will be had, where an appearance, either by an attorney or pro se, has been entered, without at least 10 days notice being given to the defendant.

(b) Default judgments for failure to plead shall not be entered except after affidavit or motion of moving party, and upon 10 days notice to the defendant's counsel.

(c) Where the case is founded on a written instrument, such as a note or contract, the original of the instrument must be produced to the Court before a default judgment will be rendered thereon. No copy of such instrument may be used, unless an affidavit is filed that the original is lost or destroyed.

(d) No default judgment will be entered except after motion and hearing on such motion; provided that the Court may permit the moving party to present evidence by affidavit in support of such motion. Such affidavits, as well as non-military affidavits, shall certify that the affiant is familiar with the defendant and the matter sued upon, and shall certify as to the current amounts due in said matter. Such affidavits shall be signed by representatives familiar with the matter and not by counsel for the movant, unless otherwise permitted by the Court.

RULE 15: PROCEEDINGS SUPPLEMENTAL, ATTACHMENTS, ORDERS IN GARNISHMENT:

LR 23-TR 69-FLR15 (a)-(c)

(a) Hearings on motions for proceedings supplemental will be set at the time of the filing of the motion, and counsel shall secure a hearing date from the Court at the time of such filing;

(b) An Order to answer interrogatories may be either separate or a part of the Order setting the hearing on the motion for proceedings supplemental, and shall notify the garnishee defendant that a judgment has been secured against the judgment defendant, the amount of the judgment, the date the hearing is set on the pending motion for proceedings supplemental, and advising that the garnishee defendant may appear at said hearing or file written answers to the interrogatories at a date prior to said hearing. Interrogatories to a garnishee defendant shall be prepared by counsel for the judgment plaintiff, with appropriate blanks after each interrogatory for the response of the garnishee defendant.

(c) Failure of a judgment defendant or garnishee defendant to appear or answer interrogatories in a duly served Order of the Court may result in a bench warrant being issued by the Court for such defendant; provided however, the judgment plaintiff must first file a Contempt Citation, schedule a hearing thereon, and have the same served, and such bench warrant will then only issue if such defendant fails to appear or otherwise comply with the Court Order. In the event a judgment defendant is arrested, a hearing on the contempt for failure to appear on the Contempt Citation will be scheduled at the convenience of the Court, after the Court notifies the judgment plaintiff of such arrest, and the time of the hearing.

RULE 16: BANKRUPTCY, NOTICE OF STAY:

LR 23-TR 62-FLR 16

Whenever any party receives an order from a Bankruptcy Court staying proceedings, it shall be sufficient for the party to file a notice of such Order with the Court, which notice shall contain the name of the party, the cause number of the bankruptcy proceeding and the date of the issuance of the stay.

RULE 17: SPECIAL RULES OF CIVIL PROCEDURE, PER T.R 79 (H)

LR 23-TR79-FLR 17(1)-(5)

Pursuant to Trial Rule 79 (h) of the Indiana Supreme Court, the Fountain Circuit Court makes the following rules regarding the reassignment to special judges in all matters other than criminal causes in the Fountain Circuit Court:

- 1) The following individuals have been contacted by the Court and have agreed to serve in the event it becomes necessary to reassign a civil case, or other matter in which a special judge may be appointed, other than a criminal case: Hon. David A. Ault, Judge, Montgomery Superior Court, Hon. Vincent F. Grogg, Senior Judge, Hon. Robert M. Hall, Judge, Senior Judge, Hon. John Rader, Judge of the Warren Circuit Court, Hon. Peggy Lohorn, Judge of the Montgomery County Court, and Hon. Thomas K. Milligan, Judge of the Montgomery Circuit Court.
- 2) Said contact was made after an opportunity of consulting with other judges in the administrative district for the Fountain Circuit Court per ADR 3 (a) and after considering the effective use of judicial resources within said administrative district, and the accessibility of said judges per T.R..79(j).
- 3) Accordingly, the Court now names the following panel to serve as special judge per T.R..79(h): Hon. David A. Ault, Hon. Vincent F. Grogg, Senior Judge, Hon. Robert M. Hall, Senior Judge, Hon. John Rader, Hon. Peggy Lohorn, and Hon. Thomas K. Milligan, to be selected as required on a rotating basis in alphabetical order.
- 4) In the event the Judge disqualifies herself in any proceeding, other than a criminal cause, involving the Wallace law firm in which the Judge has determined she has a conflict of interest, the cause shall immediately be assigned to Senior Judge Vincent F. Grogg. Should Sr. Judge Grogg be unable to serve for whatever reason, the procedure specified herein shall be used for the selection of a special judge with the exception that Sr. Judge Grogg shall be removed for the rotation.
- 5) In the event no judge is available to serve as special judge for the assignment or reassignment of a civil case or other matter in which a special judge may be named, such case shall then be certified to the Indiana Supreme Court for the appointment of a special judge; in the event the presiding judge in a civil matter per this rule should conclude that the unique circumstances presented by the case requires the appointment of a special

judge by the Indiana Supreme Court, the presiding judge may request the Indiana Supreme Court for such appointment.

RULE 18: COURT REPORTER:

LR 23-TR 15-FLR 18(a)-(b)

The following is an abbreviated version of the local rule per Administrative Rule 15, Indiana Supreme Court. The full text is available in the Clerk's office:

- (a) The official court reporter shall work under the control, direction and direct supervision of the Court.
- (b) The maximum per page fee that the Court Reporter may charge for a county indigent transcript, a state indigent transcript and private transcript is \$3.50 per page.

SPECIAL RULES OF CRIMINAL PROCEDURE

RULE 1: APPEARANCES :

LR 23-TR 3.1-FLCR 1(a)-(b)

- (a) A written appearance shall be filed in all criminal cases.
- (b) Withdrawals of appearance shall comply with the rules relating to withdrawals of appearance in civil cases where applicable, and shall be at the discretion of the Court.

RULE 2: BAIL AND BAILABLE OFFENSES:

LR 23-CR00-FLCR 2

- (a) Bail is fixed per the following schedule:

Class A felony	\$75,000.00
Class B felony	\$25,000.00
Class C felony	\$15,000.00

Class D felony	\$10,000.00
Class A Misdemeanor: OVWI; Poss. Of Marijuana; Other drug related A Misd.	\$6,500.00
All other Class A Misd.	\$3,000.00
Class B Misdemeanor	\$1,000.00
Class C Misd..10% B.A.C.	\$6,500.00
All other Class C Misd,	\$500.00

This bail schedule may be modified at the discretion of the Court. If habitual offender or habitual substance offender allegations are filed, bail schedule may be modified. If multiple non-related offenses are filed in same cause number, or accused is known to be on probation or parole, this schedule may be modified.

(b) No person shall be released on his or her own recognizance without first securing authority of the Court for such release.

(c) The Sheriff shall have the authority and discretion to detain any person under the influence of intoxicating beverages or drugs until such time as that person can be safely released without danger to himself or others.

(d) An accused may post bond in any one of four ways: (1) Professional surety bond (2) Real property bond (3) Full cash bond, or (4) By depositing with the Clerk cash in an amount of 10% of the bond set by the Court, unless the Court prohibits such procedure.

(e) If an accused posts bond per (d) (4), the same shall be made on a form supplied by the Court, which form shall be completed in its entirety. The Clerk may retain 10% of the cash deposited as an administrative fee, to be deposited in the General Fund of the County. Such fee shall not be less than \$10.

(f) In the event the accused fails to appear, any monies deposited with the Clerk, may, upon Order of Court, be transferred to the Extradition Fund of the Court to be used for the return of such accused or any other fugitive.

(g) Monies in the hands of the Clerk as bail per (d)(4) after deducting the administrative fee, shall be returned to the person posting said bail upon the meeting of the conditions of the bond, and upon Order of the Court, and the Court may order that said funds be applied to court costs, fees, fines, restitution, etc. as may be applicable

RULE 3: RELEASE OF INFORMATION:

LR 23-CR 1.1-FLCR 3

All personnel of the Clerk's Office and the Judge, as well as the Prosecuting attorney are prohibited from disclosing to any person, without the authority of the Court, information relating to the pending criminal matter that is not part of the public records of the Court, including but not limited to arguments or hearings held in chambers or otherwise outside the presence of the public.

RULE 4: INITIAL HEARINGS, OMNIBUS HEARINGS:

LR 23-CR00-FLCR 4(a)-(c)

(a) Initial hearings may be waived by the defendant, with leave of the Court, and in misdemeanors, counsel may waive the same without defendant being present, with leave of Court, but defendant shall be present in person in all felony initial hearings.

(b) Unless otherwise ordered, after initial hearing, an omnibus hearing shall be set in all criminal cases, which hearing date shall be a deadline for completing preliminary discovery, and for submitting plea agreements for the approval of the Court.

(c) Except with leave of Court, defendants shall be present in person at all omnibus hearings.

RULE 5: TRIALS:

LR 23-CR00-FLCR 5

All criminal trials shall be conducted per the rules set forth by this Court for civil cases, including but not limited to the method of selecting jurors.

RULE 6: CONTINUANCES:

LR23-CR00-FLCR 6

No continuance of any initial hearing or omnibus hearing shall be except by agreement or upon written motion. No continuances of any trial setting shall be had except upon written motion.

RULE 7: DISCOVERY:

LR 23-CR 00-FLCR 7(a)-(b)

- (a) Civil rules of discovery shall be used in criminal proceedings so far as the same are applicable.
- (b) Reciprocal order of discovery shall be entered at the time a not guilty plea is entered.

RULE 8: SPECIAL RULES OF CRIMINAL PROCEDURE:

LR 23-CR 2.2-FLCR

Pursuant to C. R. 2.2 of the Indiana Supreme Court, the Fountain Circuit Court makes the following rule regarding reassignment to special judges in the Fountain Circuit Court:

The following individuals have agreed to serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Fountain Circuit Court: Hon. Robert M. Hall, Senior Judge, Hon. John Rader, Warren Circuit Court, Hon. Bruce V. Stengel, Judge, Vermillion Circuit Court, Hon. Vincent F. Grogg, Senior Judge, Hon. David Ault, Judge, Montgomery Superior Court, Hon. Thomas Milligan, Judge, Montgomery Circuit Court, Hon. Sam Swaim, Parke Circuit Court

- (a) By order of the Indiana Supreme Court, pursuant to I.C. 33- 2.1-7-8 temporarily transfers to above judges to the Fountain Circuit Court for the purpose of reassignment of felony and misdemeanor cases.
- (b) In the event it becomes necessary to reassign a felony or misdemeanor case, the judges will be reassigned in consecutive order to the above named judges.
- (c) In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall then be certified to the Indiana Supreme Court for the

appointment on a special judge. In the event the judge presiding in a felony or misdemeanor case concludes the unique circumstance presented in such proceeding require appointment by the Indiana Supreme Court of a special judge, this presiding Judge may request the Indiana Supreme Court for such appointment.

RULES OF PROBATE PROCEDURE

RULE 1: NOTICE:

LR 23-PR00-FLPR 1(a)-(c)

(a) Whenever notice by publication and/or written notice by U. S. Mail is required to be given, the attorney shall prepare such notice with sufficient envelopes required for such mailing, with postage and addresses, and shall ensure that such notice is properly published and/or served. All notices shall comply with statutory requirements. It shall be the duty of the attorney to ascertain and provide adequate proof of notice. In the event the Clerk is to serve the notice, sufficient copies of the notice, together with a praecipe and a form of proof of notice shall be furnished to the Clerk.

(b) Copies of petitions shall be included with all notices where the hearing involved arises from matters contained in the petition, and if the Clerk is to send the notices, sufficient copies of such petition shall be furnished to the Clerk.

(c) Notice of the opening of an estate shall be by regular U. S. Mail to all readily ascertainable creditors.

RULE 2: FILING OF PLEADINGS:

LR 23-PR00-FLPR 2(a)-(g)

(a) When pleadings are filed by mail, or left with the Court for filing, and counsel desires a copy forwarded to him, counsel shall include a self-addressed envelope with sufficient postage attached for such purposes.

(b) Routine pleadings, such as Inventories, Inheritance Tax schedules, etc., may be filed with the Clerk for transmittal to the Court; all other pleadings are to be filed directly with the Court.

(c) The attorney is required to prepare orders for all proceedings except when expressly directed otherwise by the Court; and in every event, four copies of a proposed Inheritance Tax Order shall be left with the Court at the time of the filing of the tax schedules.

(d) Every pleading, including inventories, petitions, accounts shall be signed and verified by the fiduciary and signed by the attorney for the fiduciary.

(e) All pleadings shall contain the name of the attorney, together with address., telephone number and attorney identification number.

(f) The initial petition to open an estate or guardianship shall contain the social security number, date of birth and address of the fiduciary.

(g) The Clerk shall not prepare any pleadings, orders, petitions, etc. for fiduciaries seeking to act pro-se or for any attorneys and the Clerk shall not furnish files or papers from other probate matters for such persons to use as a model.

RULE 3: BOND:

LR 23-PR00-FLPR 3(a)-(e)

(a) Fiduciaries may serve without bond and upon oath only at the discretion of the Court; but in every supervised Estate the fiduciary may, in every guardianship the guardian shall be required to file a bond of not less than the value of annual rents and profits, the value of all property of the estate or guardianship in such amount and upon such conditions as the Court may require, except as hereinafter provided:

1) Where, under the terms of a Will, the testator expresses an intention that bond be waived, the Court may set the bond in an amount adequate to protect creditors, taxing authorities and devisees.

2) Where the fiduciary is an heir or legatee of the Estate, the bond may be reduced by said fiduciary's share of the Estate.

3) Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the bond may be set in an amount adequate to protect creditors and taxing authorities.

4) In an unsupervised estate, bond may be required at the discretion of the Court.

5) No bond shall be required in any estate or guardianship in which a corporate fiduciary qualified by law to serve as such is serving as a fiduciary or co-fiduciary.

(b) No attorney will be accepted as surety on any bond unless as surety for a family member.

(c) In lieu of all or part of the bond as *may* be required by 3.1. the fiduciary may restrict transfer of or part of the estate or guardianship liquid assets by placing those assets in a federally insured financial institution with the following restriction placed on the face of the account or document:

**NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT
WRITTEN ORDER OF THE FOUNTAIN CIRCUIT COURT.**

(d) All petitions to open an estate shall set forth the probable value of the personal property plus the estimated rents and profits to be derived from the property in the estate or guardianship, and In addition, in a guardianship, the petition shall further state the annual income, pension benefits, etc., of the alleged incapacitated person.

(e) The name and address of the insurance agency providing the corporate surety shall be typed or printed on all corporate bonds.

RULE 4: INVENTORY:

LR 23-PR00-FLPR 4

(a) An inventory shall be filed by the fiduciary in all supervised estates and guardianships as follows: Estates, within 60 days; Guardianships, within 90 days for permanent guardians and within 30 days for temporary guardians. All times relate to the date of the appointment of the fiduciary.

(b) In the event a partial inventory is filed, all subsequent inventories must contain a recapitulation of prior inventories.

RULE 5: REAL ESTATE:

LR 23-PR00-FLPR 5(a)-(d)

(a) In all supervised estates and guardianships in which real estate is to be sold, a written appraisal prepared by a person competent to appraise real estate shall be filed with the Court with the filing of the Petition for Sale, unless such appraisal was filed with the inventory.

(b) All sales of real estate shall be made within six months of the date of the filing of the Petition for Sale, and if not, a current appraisal shall be filed with the Court.

(c) All deeds submitted to the Court for approval shall be signed by the fiduciary and the signature notarized prior to submission, and all such deeds shall be submitted with the Report of Sale of Real Estate, and copies of such deeds shall be also submitted at said time and filed with the Court.

(d) Whenever a Final Order reflects that real estate has vested in heirs or beneficiaries, that Order shall be recorded with the County Recorder of the County where such real estate is situate, and evidence of such recording shall be provided to the Court with the supplemental report.

RULE 6: SALE OF ASSETS:

LR 23-PR00-FLPR 6(a)-(c)

(a) No petition to sell personal property will be granted unless a written appraisal, prepared by a person competent to appraise personal property, setting forth the fair market value thereof, is filed with the Court at the time of the filing of the Petition to Sell, unless such appraisal was filed with the inventory. This rule shall not apply to sales at public auctions.

(b) All sales shall be made within six months of the date of the filing of the Petition for Sale, and if not, a current appraisal shall be filed with the Court.

(c) No written appraisal shall be required for sale of assets traded in a market, the value of which is readily ascertainable, such as stocks, bonds, mutual funds, commodities, precious metals, etc.

RULE 7: ACCOUNTINGS:

LR 23-PR00-FLPR 7 (a)-(l)

(a) Whenever an estate cannot be closed within one year, an intermediate account shall be filed with the Court within 30 days after the expiration of one year and each succeeding year thereafter. Such account shall comply with the provisions of I.C. 29-1-16-4 and 29-1-16-6, and such account shall:

- (1) State facts showing why the estate cannot be closed and the estimated date of closing; and
- (2) Shall propose partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

(b) All guardianship accounts shall contain a certification of an officer of any financial institution in which the guardianship assets are held, verifying the account balance (see Appendix a)

(c) All social security or medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been granted to allow such funds to be paid directly to a residential or health care facility.

(d) In all supervised estate and guardianship accountings, vouchers or cancelled checks for the expenditures claimed shall be filed with the accounting. No affidavits in lieu of vouchers will be accepted from individual fiduciaries. An affidavit in lieu of vouchers may be accepted by the Court from corporate fiduciaries provided it retains their vouchers on file or by an electronic recording device, and it agrees to make the same

available to interested parties upon court order. The Court may require such institution to provide a certification from its Internal Audit Department verifying the accuracy of the accounting.

(e) In all accountings a notation shall be placed by each claimed expense item indicating the nature of the expenditure, e.g.

Bogota Drugs--toiletries

Henry Jones, M.D.--physical exam

Sam Smith--roof repair, residence of ward Tendercare Nursing Home--care of ward

(f) All accountings shall contain an itemized statement of assets on hand.

(g) Receipts or cancelled checks for all distributions shall be filed before a final accounting will be approved and discharge granted.

(h) All accountings shall follow the proscribed statutory format; informal handwritten or transactional accounts will not be accepted.

(i) All court costs shall be paid and all claims satisfied and released before hearing on the final account and a certification of the Clerk proving such payment shall be presented to the Court with the final account.

(j) The Federal Estate Tax Closing letter and the Indiana Inheritance Tax Closing letter(or counter-signed receipt) or a photocopy thereof showing payment of such taxes, shall be attached to the final account at the time of filing the same.

(k) No petition to close an estate as insolvent shall be made until an inventory has been filed; and no estate shall be closed as insolvent without due notice to all creditors and all other persons interested in the estate.

(l) In the event objections are filed to final accounts, the fiduciary shall have the burden of going forward with the evidence relative to said account at the hearing on said objections.

RULE 8: FEES OF ATTORNEYS AND FIDUCIARIES:

LR 23-PR00-FLPR 8(a)-(g)

(a) No fees for fiduciaries or attorneys shall be paid without prior written order of Court.

(b) All **Orders** for fees in estates shall provide that such fees are to be paid only after approval of the final account. If payment of fees prior to approval of the final account would benefit the estate for tax purposes or some other purpose, personal representative may petition the Court for the approval of such fees.

(c) A guardian or guardian's attorney may petition for fees at the time of filing an inventory. No further petition for fees may be filed until a biannual, annual or final accounting has been filed.

(d) No attorney fee or fiduciary fee will be determined or authorized in any unsupervised estate.

(e) All petitions for fees shall conform to the fee guidelines fixed by the Court, and attached hereto as an appendix, and said petitions shall set forth specifically all services performed in detail as well as the amount of the fee requested and how the same was calculated. (See Appendix b)

(f) Where contracts for legal services have been entered into prior or subsequent to the opening of a supervised estate or guardianship, the Court reserves the right to approve or disapprove the fee contracts consistent with this Court's fee guidelines.

(g) Unjustified delays in carrying out duties by the fiduciary and/or attorney may result in the reduction of fees.

RULE 9: UNSUPERVISED ADMINISTRATION:

LR 23-PR00-FLPR 9 (a)-(g)

- (a) No petition for unsupervised administration shall be granted unless the consent requirements of the Indiana Probate Code is met, together with all other statutory requirements for unsupervised estates.
- (b) The petition requesting unsupervised administration shall set forth the estimated value of all property and the estimated liabilities of the estate.
- (c) No unsupervised estate will be closed unless the fiduciary complies with rules 7(i) and 7(j).
- (d) Once an estate is opened as unsupervised, the Court will not enter any orders relating to the administration of the estate, unless a petition is filed requesting that said estate will be treated thenceforth as a supervised estate. Once an estate moves from being unsupervised to supervised no order shall be entered authorizing a change back to unsupervised status.
- (e) No Order shall be entered after the filing of the Closing Statement approving the administration of the estate, as the Probate Code provides that such estates close automatically; provided however, the Court may enter an order acknowledging that more than three months have elapsed since the filing of the Closing Statement.
- (f) In all unsupervised estates, the Closing Statement shall include a certification as to Notices, the release of payment of claims, the payment of death taxes and expenses of administration, a report of distribution and accounting, and a report as to any deeds executed by the personal representative and shall be on a form substantially similar to the one attached in the appendix to these rules.
- (g) In all unsupervised estates immediately upon the execution of letters of administration, the personal representative shall provide a notice to all interested persons of their rights relating to an unsupervised estate as provided by the Indiana Probate Code, and shall file with the Clerk a proof of service of such notice, which notice shall be substantially similar to the one attached in the appendix to these rules.(See Appendix c)

RULE 10: TIMELINESS:

LR 23-PR00-FLPR 10(a)-(b)

(a) The clear intent of the Indiana Probate Code is that estates and guardianships will be administered in an expeditious manner. To this end any and all requirements of that Code relative to time shall be strictly enforced. Fiduciaries and attorneys for fiduciaries shall have the responsibility of seeing that estates are administered upon in conformance with this intent. Failure to comply with this intent may, upon Order of the Court, subject the fiduciary and/or the attorney to removal or penalties for Civil Contempt.

(b) The Probate Code expressly requires the fiduciary in estates to examine the claim docket and to allow or disallow each claim filed against the estate within 5 months and 15 days after the date of the first published notice to creditors, and makes the fiduciary personally responsible for any costs caused by the failure to so comply with the Code, and all fiduciaries and attorneys shall comply with this Code provision. Upon disallowance of a claim, the fiduciary shall notify the Court so that the same may be transferred to the plenary docket as provided by law, and the fiduciary shall then have the responsibility of notifying the claimant or the claimant's counsel. Transferred claims shall carry the same cause number of the estate so long as the matter remains in the Fountain Circuit Court.

RULE 11: GUARDIANSHIPS:

LR 23-PR00-FLPR 11 (a)-(h)

(a) In all guardianship proceedings seeking to declare an adult incapacitated for any reason, the Incapacitated person shall be present at the hearing or sufficient evidence shall be presented showing that the alleged incapacitated person is unable to appear, or that said appearance would result in danger to his or her health.

(b) In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's report by the physician treating the alleged incapacitated person or such additional evidence as the Court shall require, shall be presented at the hearing. No

determination of incapacity shall be made without a supporting physician's report or evidence.(see Appendix d).

(c) At the time of the filing of the Petition for Guardian the Court shall appoint a guardian ad litem to represent the alleged incapacitated person, unless the Court finds that such an appointment is not necessary. The costs of such guardian ad litem maybe taxed as court costs in the guardianship. The duties of such guardian ad litem shall include at a minimum:

- A) Visit the person alleged to be incapacitated prior to hearing;
- B) Explain to the person the nature, purpose and legal effect of the appointment of a guardian;
- C) Explain to the person the procedure of the hearing and the person's rights in such hearing, including the right to contest the petition, the right to request limits on the powers of the guardian, the right to object to a particular person being appointed guardian, the right to be present at the hearing, and the right to be represented by a lawyer at the hearing;
- D) Inform the person of the name of the person seeking to be appointed guardian.
- E) Make determinations and inform the Court of those determinations as to: a) whether the person wishes to be present at the hearing, b) whether the person wishes to contest the petition, c) whether the person wishes limits to be placed on the powers of the guardian, and d) whether the person objects to a particular person being appointed guardian.

(d)Current reports filed by the guardian of the person shall state the present whereabouts of the incapacitated person and his general welfare at that time. If the incapacitated person is an adult, a statement of a treating physician shall be filed with all current accounts, setting forth the date of the last physical examination and verifying that the incapacity of the person remains unchanged since the date of the establishment of the guardianship or the date of the last current report, and the living arrangements of the incapacitated person.

(e) In every petition for the appointment of a guardian of the person of a minor (other than a routine "school guardianship") the following information shall be given:

- A) Present address of the child;

- B) The places where the child has lived within the past two years and the names and present addresses of the persons with whom the child has lived during that period;
- C) Whether, to petitioner's knowledge, any other litigation of any kind is pending concerning the custody of the child in Indiana or in any other jurisdiction;
- D) Whether, to petitioner's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child;
- E) If the child is born out of wedlock, the name of the putative father of the child, and his address, and the name and address of the natural mother of the child.
- (f) Where warranted, the Court may request an investigation into the circumstances of the child, and pursuant to 11(c) may appoint a guardian ad litem to represent the interests of the child, or may seek the assistance of the Department of Public Welfare.
- (g) In the event the petition for guardianship is for the sole purpose of being a so-call “school guardianship” and is routine in its nature, the petition shall be so entitled, and the Court may waive the filing of any reports or the posting of any bond, and in such event, the “guardian” shall agree to immediately notify the Court if and when circumstances occur whereby such “school guardianship” is no longer necessary.
- (h) Nothing herein shall be deemed as amending, superseding or altering the Probate Rules and Regulations promulgated by the Veterans Administration of the United States, and every fiduciary and attorney shall comply with the same, if applicable.

